

Exhibit B

Issue No.	Issue Description	DeltaCom Position	BellSouth Position	Issue Status
26	<p>Local Switching – Line Cap and Other Restrictions (Attachment 2 – Sections 9.1.3.2 and 9.1.2):</p> <p>a) Should the interconnection agreement include language that prevents BellSouth from imposing restrictions on DeltaCom's use of local switching?</p> <p>b) Should BellSouth provide local switching at market rates where it is not required to provide local switching as a UNE?</p> <p>c) If so, what should be the market rate?</p>	<p>The existing agreement states that except as otherwise required, BellSouth will not impose restrictions on DeltaCom's use of local switching unless BellSouth can demonstrate harm to its network.</p>	<p>a) BellSouth is only required to provide local switching as set forth in FCC's rules, which do impose restriction on DeltaCom's use of local switching. BellSouth will provide local switching in accordance with FCC and Commission rules. This issue is more appropriately addressed in the TRA's Generic Local Switching Docket (02-00207) and, therefore, should be transferred to that docket.</p> <p>b) BellSouth will provide local switching at market-based rates where BellSouth is not required to unbundle local switching.</p> <p>c) An arbitration under §251 of the 1996 Act is not the appropriate forum for resolution of this issue.</p>	Open
27	<p>Treatment of Traffic Associated with Unbundled Local Switching but Using DeltaCom's CIC (Attachment 2 – Section 9.1.7):</p> <p>Should calls originated by a DeltaCom end-user or BellSouth end-user and terminated to either DeltaCom or BellSouth be treated as local if the call originates and terminates within the LATA?</p>	<p>If DeltaCom is using UNEP to serve a customer, DeltaCom wants the local calling area to be the entire LATA if the call originates and terminates within the LATA.</p>	<p>The CIC code is an access code and would result in call being billed as a toll call. This is simply an attempt by DeltaCom to avoid access charges.</p>	Open
28	<p>Local Switching (Attachment 2 – Sections 9.1.3 through 9.1.63):</p> <p>Should the existing language in the interconnection agreement regarding local switching and other issues be maintained?</p>	<p>Yes. DeltaCom wants to keep the language regarding local switching and other issues in the existing contract.</p>	<p>BellSouth's position is that its proposed language appropriately addresses BellSouth's provision of local switching. Inclusion of DeltaCom's proposed language is duplicative and unnecessary.</p>	Open

Exhibit C

**BELLSOUTH TELECOMMUNICATIONS, INC.,
DIRECT TESTIMONY OF KATHY K. BLAKE
BEFORE THE TENNESSEE REGULATORY AUTHORITY**

DOCKET NO. 03-00119, .

AUGUST 4, 2003

Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH TELECOMMUNICATIONS, INC. ("BELLSOUTH") AND YOUR BUSINESS ADDRESS.

A. My name is Kathy K. Blake. I am employed by BellSouth as Director – Policy Implementation for the nine-state BellSouth region. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375.

Q. PLEASE PROVIDE A BRIEF DESCRIPTION OF YOUR BACKGROUND AND EXPERIENCE.

A. I graduated from Florida State University in 1981 with a Bachelor of Science degree in Business Management. After graduation I began employment with Southern Bell as a Supervisor in the Customer Services Organization in Miami, Florida. In 1982, I moved to Atlanta where I held various positions involving Staff Support, Product Management, Negotiations, and Market Management within the BellSouth Customer Services and Interconnection Services Organizations. In 1997, I moved into the State Regulatory Organization with various responsibilities for testimony preparation, witness

1 support and issues management. I assumed my current responsibilities in July,
2 2003.

3

4 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

5

6 A. The purpose of my testimony is to present BellSouth's position on several
7 unresolved policy issues included in the arbitration between BellSouth and
8 ITC^DeltaCom Communications, Inc. ("DeltaCom"). My testimony
9 specifically addresses Issues 26, 36, 37, and 57. Each of these issues likely
10 will be impacted by the Federal Communications Commission's ("FCC's")
11 Triennial Review decision.

12

13 Q. PLEASE BRIEFLY DESCRIBE WHAT YOU MEAN BY THE TRIENNIAL
14 REVIEW DECISION AND HOW BELL SOUTH PROPOSES THE
15 AUTHORITY PROCEED IN ADDRESSING THESE ISSUES?

16

17 A. On February 20, 2003, the FCC adopted new rules concerning incumbent local
18 exchange carriers' ("ILECs") obligations to make elements of their network
19 available on an unbundled basis to new entrants. As of the date of my
20 testimony, the FCC has not issued its written order and, as such, the FCC's
21 February 20, 2003 action has no effect on this proceeding. BellSouth's
22 position is that the Tennessee Regulatory Authority ("TRA" or "Authority")
23 should consider the evidence put forth in this proceeding and render its
24 determination of the issues based on the **current** statutory and regulatory
25 requirements, and not by any party's speculation of what the FCC may

1 ultimately reflect in its written Triennial Review Order. In fact, it is unclear
2 which issues will be addressed and resolved solely by the FCC and which
3 issues will be relegated or delegated to state commissions to resolve. At the
4 time the ruling body's (FCC or state commission) order becomes effective, the
5 change of law provisions in the interconnection agreement will allow the
6 interconnection agreement to be revised accordingly. In addition, BellSouth
7 reserves the right to supplement its testimony following the issuance of the
8 FCC's written Triennial Review Order.

9
10 ***Issue 26: Local Switching – Line Cap and Other Restrictions (Attachment 2 –***
11 ***Sections 10.1.3.2 and 10.1.2):***

12 ***(a) Is the line cap on local switching in certain designated MSAs only for a***
13 ***particular customer at a particular location?***

14 ***(b) Should the Agreement include language that prevents BellSouth from***
15 ***imposing restrictions on DeltaCom's use of local switching?***

16 ***(c) Is BellSouth required to provide local switching at market rates where***
17 ***BellSouth is not required to provide local switching as a UNE? If so, what***
18 ***should be the market rate?***

19
20 Q. WHAT IS BELL SOUTH'S POSITION ON THESE ISSUES?

21
22 A. (a) When a particular customer has four or more lines within a specific
23 geographic area, even if those lines are spread over multiple locations,
24 BellSouth is not obligated to provide unbundled local circuit switching as long
25 as the other criteria in FCC Rule 51.319(c)(2) are met.

1

2 (b) No, the interconnection agreement should not include language that
3 prevents BellSouth from imposing restrictions on DeltaCom's use of local
4 switching. The current FCC rules impose restrictions on DeltaCom's use of
5 local switching and set forth the specific criteria under which BellSouth can
6 avail itself of the local switching exemption. These rules should continue to
7 apply unless and until they are lawfully amended by the FCC. BellSouth
8 reserves the right to supplement its testimony following the issuance of the
9 FCC's written Triennial Review Order.

10

11 (c) BellSouth will provide local switching at market-based rates where
12 BellSouth is not required to unbundle local switching. The appropriateness of
13 BellSouth's rates for providing local switching where it is not required by the
14 Telecommunications Act of 1996 ("the Act") or the FCC's Rules
15 implementing the Act are not governed by §§ 251 or 252 of the Act and,
16 accordingly, it is not appropriate to address this matter in an arbitration
17 proceeding.

18

19 Q. HAS THE AUTHORITY PREVIOUSLY ADDRESSED THE
20 APPLICATION OF THE LINE CAP ON LOCAL SWITCHING (ISSUE
21 26A)?

22

23 A. Yes. In its decision in the BellSouth/AT&T arbitration proceeding, the
24 Authority voted to "permit BellSouth to aggregate lines provided to multiple
25 locations of a single customer to determine compliance with FCC Rule

1 51.319(c)(2)." (See Final Order of Arbitration Award in Docket No. 00-00079,
2 dated November 29, 2001, page 20) In support of this decision, the Authority
3 took guidance from the FCC's Third Report and Order¹ in that the FCC chose
4 to utilize the term "customer" throughout its discussion, rather than "customer
5 location."

6
7 The Authority subsequently clarified this decision in response to AT&T's
8 Petition for Reconsideration of the Order. The Authority clarified that
9 "[a]lthough BellSouth can aggregate lines of a customer running from multiple
10 locations for the purpose of determining if BellSouth is obligated to provide
11 unbundled local switching pursuant to FCC Rule 51.319(c)(2), this aggregation
12 must be based on each location within the Nashville Metropolitan Statistical
13 Area served by AT&T." (See Order Granting in Part Requests for
14 Reconsideration and Clarification, Docket No. 00-00079, dated April 22, 2002,
15 page 5) DeltaCom's attempt to retain language from its existing
16 interconnection agreement that is contrary to both the Authority's previous
17 findings and the FCC's Order should be rejected. The language proposed by
18 BellSouth, however, fully comports with the rulings of this Authority and the
19 FCC and should be accepted.
20

21 ***Issue 36: UNE/Special Access Combinations (Attachment 2 – Sections 10.7 and***
22 ***10.9.1):***
23
24

25 ¹ *In re: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*,
FCC 99-328, CC Docket No. 96-98, released Nov. 5, 1999, paras. 293-297 ("Third Report and Order").

1 (a) Should DeltaCom be able to connect UNE loops to special access
2 transport?

3 (b) Are special access services being combined with UNEs today?
4

5 Q. WHAT IS BELL SOUTH'S POSITION ON THESE ISSUES?
6

7 A. (a) DeltaCom should not be allowed to connect UNE loops to special access
8 transport. Nothing in the Act or the FCC rules requires BellSouth to combine
9 UNEs with tariffed services. The FCC's Rule regarding combinations (47
10 C.F.R. 51.315) relates to combinations of UNEs. It contains no requirements
11 for an ILEC to combine UNEs with tariffed services. Further, the FCC
12 specifically addressed this matter in its Supplemental Clarification Order,² in
13 which it rejected MCI's request to eliminate the prohibition on co-mingling.
14 The FCC is also addressing this issue in its Triennial Review proceeding.
15

16 (b) BellSouth has no agreements with other CLECs that require UNE/special
17 access services combinations.
18

19 Q. YOU MENTIONED THE FCC'S REJECTION OF MCI'S REQUEST TO
20 ELIMINATE THE PROHIBITION ON CO-MINGLING. COULD YOU
21 EXPLAIN HOW THAT RELATES TO THIS ISSUE?
22
23

24 ² In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act
25 of 1996, Supplemental Order Clarification, CC Docket No. 96-98, FCC 00-183, 15 FCC Rcd 9587,
para. 28 (rel. June 2, 2000) ("Supplemental Order Clarification").

Exhibit D

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee**

**In Re: Petition for Arbitration of ITC^DeltaCom Communications, Inc. with BellSouth
Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996**

Docket No. 03-00119

**BELLSOUTH TELECOMMUNICATIONS, INC.
POST-HEARING BRIEF**

**GUY M. HICKS
JOELLE J. PHILLIPS
333 Commerce Street, #2101
Nashville, TN 37201-3300
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**R. DOUGLAS LACKEY
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BellSouth Center - Suite 4300 675
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**ATTORNEYS FOR BELLSOUTH
TELECOMMUNICATIONS, INC.**

by adding language into the interconnection agreement that will impose burdens on BellSouth that are not required by law and that are contrary to the Authority's decision in the AT&T arbitration. The Authority should reject DeltaCom's attempt to add such language to the interconnection agreement. The language BellSouth proposes to include in the parties' interconnection agreement fully obligates BellSouth to provide unbundled local switching in accordance with FCC Rules. (Blake Rebuttal, p. 2-3) The Authority should approve such language until such time as its state proceedings under the FCC's TRO require a change.

BellSouth acknowledges the continuing obligation to provide local switching under Section 271 of the 1996 Act, even in those instances where local switching is no longer a UNE under Section 251 of the 1996 Act. (Milner, Tr. p. 528-529). Thus, the remaining issue is the price BellSouth will charge for non-UNE local switching.³¹

Issue 26(d): What should be the market rate?

DISCUSSION

As noted above, the TRA's authority to set rates in a Section 252 arbitration proceeding is limited to the establishment of "rates for interconnection services, or network elements according to subsection (d)", which is the TELRIC pricing standard for unbundled network elements. Obviously, the TELRIC pricing standards do not apply to non-UNE switching; thus, the Authority has no jurisdiction, as a matter of law, in the context of a Section 252 arbitration proceeding, to set such rates. The appropriate pricing standard for non-UNEs is found in Sections 201 and 202 of the 1996 Act, which

³¹ Issue 26(c), which addresses BellSouth's obligation to continue to provide local switching to DeltaCom in those situations where BellSouth has been relieved of the obligation to unbundle local switching (i.e., where local switching is no longer a UNE), has been deferred by the parties.

require "just and reasonable" rates.³² Thus, as demonstrated below, the FCC (not state commissions) will be the final arbiter of whether a non-UNE rate is "just and reasonable" under the 1996 Act.

The issue of just and reasonable rates, including an analysis of jurisdiction and compliance, is also discussed by the FCC in the TRO (See generally, ¶¶656-664). The FCC ruled:

Whether a particular checklist element's rate satisfies the just and reasonable standard of section 201 and 202 is a fact-specific inquiry that the Commission [the FCC] will undertake in the context of a BOC's application for section 271 authority or in an enforcement proceeding brought pursuant to section 271(d)(6). We note, however, that for a given purchasing carrier, a BOC might satisfy the standard by demonstrating that the rate for a section 271 network element is at or below the rate at which the BOC offers comparable functions to similarly situated purchasing carriers under its interstate access tariff, to the extent such analogues exist. Alternatively, a BOC might demonstrate that the rate at which it offers a section 271 network element is reasonable by showing that it has entered into arms-length agreements with other, similarly situated purchasing carriers to provide the element at that rate.

(TRO, at ¶664). As discussed in the TRO, the FCC has reserved for itself the jurisdiction to determine whether a rate is just and reasonable through either Section 271 long distance applications or federal complaint proceedings. BellSouth is not aware of any challenge to BellSouth's market rates during the course of BellSouth's Section 271 proceedings either at the state or federal level.

Also enlightening is the FCC's analysis of the manner in which a BOC can demonstrate that rates are just and reasonable; specifically through a showing that multiple agreements have the same market rate. Virtually every BellSouth Interconnection Agreement approved by the Authority, *including the current*

³³ See, *UNE Remand Order*, 15 FCC Rod at 3905, 11470.

BellSouth/DeltaCom Interconnection Agreement,³³ contains the very market rates about which DeltaCom complains. This showing alone, at least under the FCC's TRO analysis, demonstrates that BellSouth's market rates are just and reasonable.³⁴ Thus, the Authority should reject DeltaCom's position on this issue.

DeltaCom's case on this issue emphasized the "development" of BellSouth's rate and sought to make much of the lack of workpapers or cost information "justifying" the \$14.00 rate. This emphasis wholly misses the mark. The fact is that "market" rates are those that the market sets. As noted above, numerous other carriers are paying this same rate under their own approved interconnection agreements.

As a legal matter, DeltaCom has identified no legal precedent identifying any guidance on how a state agency would go about establishing a market rate - other than looking at what currently exists in the market. Now that the TRO has firmly clarified that the determination of the "justness" and "reasonableness" of such rates is a matter to be addressed to the FCC, the Authority should reject DeltaCom's effort to hold, at the state level, that the rate currently being charged to numerous other carriers is unjust or unreasonable.

³³ See, *BellSouth/DeltaCom Interconnection Agreement* dated April 24, 2001, Attachment 11, pages 33-34; See also, Amendment to the Interconnection Agreement signed by DeltaCom on September 19, 2002.

³⁴ DeltaCom contends that simply because the market rate is higher than the TELRIC rate, the market rate must be unreasonable. However, DeltaCom offers no comparison of BellSouth's market rate to the market rate other providers in BellSouth's region charge for local switching. Likewise, DeltaCom offers no evidence of DeltaCom's internal switching costs, or the costs to DeltaCom for placing its own switch, both of which could exceed BellSouth's market rate.

Exhibit E

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1 BEFORE THE TENNESSEE REGULATORY AUTHORITY

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4 IN RE:

5 PETITION FOR ARBITRATION OF) Docket No.
ITC DELTACOM COMMUNICATIONS, INC.,) 03-00119
6 WITH BELL SOUTH TELECOMMUNICATIONS, INC.)

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TRANSCRIPT OF PROCEEDINGS

10

Monday, June 21, 2004

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APPEARANCES:

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For BellSouth: Mr. Guy Hicks

14

For ITC DeltaCom: Mr. Henry Walker
Ms. Nanette Edwards

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24 Reported By:
Christina M. Rhodes, RPR, CCR
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1 (The aforementioned cause came on to
2 be heard on Monday, June 21, 2004, beginning at
3 approximately 2:08 p.m., before Chairman Deborah Taylor
4 Tate, Director Pat Miller, and Director Ron Jones, when
5 the following proceedings were had, to-wit:)

6
7 CHAIRMAN TATE: Good afternoon. We
8 are without our docket clerk; I'm now lost.

9 We are here on Docket 03-00119,
10 petition for arbitration of ITC DeltaCom
11 Communications, Inc., and BellSouth Telecommunications,
12 Inc.

13 Why don't you-all just go ahead and
14 identify yourselves for the record so we'll know that
15 you were here and present.

16 MR. HICKS: Guy Hicks on behalf of
17 BellSouth Telecommunications.

18 MR. WALKER: Henry Walker and Nanette
19 Edwards here on behalf of ITC DeltaCom.

20 CHAIRMAN TATE: Thank you-all.

21 Do you-all have any questions for the
22 parties?

23 (No response.)

24 CHAIRMAN TATE: As you-all know for
25 some time, actually for months, I've really been

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1 encouraging commercially negotiated agreements between
2 the parties. This dates back to I think Chairman
3 Powell's first request for the parties to do that, and
4 then I tried to do that as well. Mr. Walker admonished
5 me not to undermine the FBO process, although it is
6 really not very much in my nature because, as you-all
7 know, I really am much more of a mediator.

8 I have played with cutting the numbers
9 in half. I have thought through this a lot, but in
10 order to, I think, be true to my requests and my
11 philosophies about market-based rates, what I would
12 like to propose is -- because from my reading of the
13 record, the only rate that has ever been negotiated was
14 the \$14 rate, and I would propose that we accept that,
15 that we continue the present rate on an interim basis
16 and subject to true up or true down as the case might
17 be. And I believe I said on an interim basis until
18 this Authority or the FCC or there is another rate
19 negotiated by the parties. I believe that that would
20 be most consistent with my previous request by the
21 parties and my philosophy regarding market-based rates.

22 DIRECTOR JONES: In this arbitration
23 we've gone back and forth with this issue, and we wound
24 up at a place where we requested final best offers to
25 make a determination as what the market rate should be

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1 for unbundled switching provided pursuant to
2 Section 271 of the Act.

3 Based on that particular requirement,
4 unbundled network elements under Section 271, the
5 pricing for them and market base has a particular
6 standard of just and reasonable. And also as a final
7 best offer for a switching element only, that is the
8 rate that we requested in the FBO, and unlike DeltaCom,
9 BellSouth did not propose a standalone rate for
10 switching in its final best offer. And according to
11 the case law that exists with respect to a just and
12 reasonable rate, it covers the utility's operating
13 expenses as well as a fair return on investments, and
14 DeltaCom's FBO contained those elements.

15 On the other hand, BellSouth failed to
16 demonstrate that its proposed final best offer, its 271
17 switching rate, is at or below the rate at which
18 BellSouth offers comparable functions to similarly
19 situated purchasing carriers under its interstate
20 access tariff or that the 271 switching element final
21 best offer is reasonable by showing that it has entered
22 into arm's length agreements with other similarly
23 situated purchasing carriers to provide an inclusive
24 standalone switching at the rate proposed in the final
25 best offer.

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1 And for those reasons, my position is
2 that we adopt DeltaCom's rate as an interim rate for
3 switching.

4 MR. HICKS: Directors, may I comment
5 on --

6 DIRECTOR JONES: I think at this point
7 we're in the middle of deliberating this issue, and I
8 think it's appropriate for us to continue to finish the
9 deliberations, Mr. Hicks.

10 MR. HICKS: I know we had -- you heard
11 from counsel earlier about whether to defer the issue,
12 but I'm not sure you heard from counsel on the merits
13 of the issue.

14 DIRECTOR JONES: I think we're right
15 in the middle of deliberating at this point, and I have
16 a motion by Chairman Tate and I have a motion out here
17 and I believe after Director Miller gets an opportunity
18 to weigh in --

19 DIRECTOR MILLER: I'm going to move
20 for a five-minute recess.

21 CHAIRMAN TATE: We'll take a
22 five-minute recess and be back on the record at
23 2:20 p.m.

24 (Recess taken from 2:15 p.m.
25 to 2:20 p.m.)

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1 CHAIRMAN TATE: If we could come back
2 to order and we will be back on the record.

3 DIRECTOR MILLER: Thank you, Madam
4 Chair.

5 DIRECTOR JONES: Director Miller,
6 before you continue, I would just like to clarify that
7 in my motion the interim period -- I'm defining that to
8 be consistent with the DeltaCom proposal. I just
9 wanted to make sure I defined the interim period.

10 DIRECTOR MILLER: Chairman Tate, I
11 would like to ask you to consider amending your motion
12 to adopt the DeltaCom final and best offer of 5.08 as
13 an interim rate subject to a true up based on the
14 adoption of a generic rate and further request that you
15 as chair open a docket to adopt a rate for switching
16 outside of 251 requirements.

17 I believe this approach to keep
18 negotiations ongoing in light of -- this is the best
19 approach to keep negotiations ongoing in light of the
20 continued uncertainty at the FCC. In addition, I
21 believe this approach will allow all interested parties
22 to have input into the final rate adopted, and since
23 it's impossible to predict either what will happen or
24 when it will happen, assigning an interim rate will
25 provide ITC DeltaCom with some level of relief and